



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Peter X. Ma *et al.*  
Serial No.: 09/939,838  
Filed: 08/27/2001  
Entitled: Porous Composite Materials

Group No.: 1711  
Examiner: Foelak, M.

PETITION TO WITHDRAW THE FINALITY OF THE  
OFFICE ACTION OF MAY 6, 2003

Mail Stop RCE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8(a)(1)(i)(A)	
I hereby certify that this correspondence (along with any referred to as being attached or enclosed) is, on the date shown below, being deposited with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
Dated: <u>September 8, 2003</u>	By: <u>Christopher J. Collins</u> Christopher J. Collins

Sir or Madam:

This petition is filed with a preliminary amendment and an RCE (which is filed under protest. The petition is filed pursuant to MPEP 1002.02(c) on the grounds that the final office action a) is incomplete<sup>1</sup> and b) fails to clearly develop the issues,<sup>2</sup> and is therefore premature. MPEP 706.07(c). The office action was incomplete with respect to the following:

1. The basis for rejecting Claims 18-23 is not found in the office action. Of particular note is Claim 23, which is an independent claim specifying a particular ratio of components. Neither Claim 23 nor the ratio of components are discussed. This is not proper examination. This is certainly inappropriate for a FINAL office action.
2. The ratios specifically set forth in Claims 15-17 are not discussed. Again, this is not proper examination. All of the claim elements must be considered.

<sup>1</sup> The Examiner's action needs to "be complete as to all matters . . ." MPEP 707.07

<sup>2</sup> Before final rejection is in order a *clear* issue should be developed between the examiner and the applicant." MPEP 706.07 (emphasis added)

3. The element of "simulated body fluid" in Claim 6 is not discussed - even though this deficiency was noted in a prior response. By ignoring the claim element - and then ignoring applicants specific request to take note of the claim element - the Examiner has not developed the clear issues required for examination.

In sum, the Examiner has (at best) done a partial examination of the claims. This is not proper. Such an office action is deficient, rendering the designation of "FINAL" premature.

### CONCLUSION

In view of the deficiencies of the office action, the finality should be withdrawn. Therefore, the RCE is filed under protest. A petition to withdraw the finality of the office action should be granted and the money refunded. The MPEP indicates that the petition will be reviewed by the Group Director. Should the Group Director believe that a telephone interview would aid in the prosecution of this application, the Applicants encourage that the undersigned be called collect at 617.984.0616.

Dated: September 8, 2003

  
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